Supreme Court, U.S.
FILED
JAN 8 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-800

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1986

EDUARDO LUCERO, et al.,

Appellants,

v.

OFFICERS JAMES "BUSTER" SNYDER, et al.,

Appellees.

APPELLANTS' MOTION IN OPPOSITION TO APPELLEES' MOTION TO DISMISS OR AFFIRM

EDUARDO MARRUJO LUCERO
APPELLANT, PRO SE
3410 West Alaska Place
DENVER, COLORADO 80219
(303) 922-7634

COME NOW the appellants, and move this Court to deny appellees' Motion to Dismiss or Affirm.

AS GROUNDS for this Motion, appellants submit the following:

1. Appellees' Motion to Dismiss or Affirm is based upon the fact that appellants have not ordered the trial transcript.

2. On January 6, 1986 appellants filed Motions in Opposition to Appellees' Motion to Dismiss in the Tenth Circuit Court of Appeals. See Exhibit "A." Appellants advised the Court that none of them could pay $6,000.00 for the trial transcript, and that:

> [t]he transcript is not of material effect to the District Court's judgment.

See Exhibit "A."

3. Appellants do not need the trial transcript itself because the errors are

in the case file, in the Judgment, and in the Opinion.

4. Appellees are not ordering the trial transcript even though they would need it to defend themselves against appellants' complaint. Appellees cannot afford to pull the transcript because it would substantiate the condemnatory facts which appellees are trying so desperately to suppress.

5. Appellees are not responsive to the true facts and issues of this case. Appellees are trying to subvert this case and suppress the facts, moreover, even if appellees want to argue the facts, they cannot do so because in doing so, they would have to admit their guilt.

THE FACTS

a. Appellees forcibly moved appellants out of the park to prevent their speech, and to break up their assembly.

b. Appellants did not resist, and

they moved out of the park without incident.

c. Appellees attacked appellants with dogs, tear gas, and clubs.

d. Appellees assaulted every person in sight in the neighborhood surrounding the park for four hours.

THE ISSUES

a. Appellees effectuated prior restraints on appellants' speech, press, assembly, association, expression, and liberty.

b. The trial court erred in its jury instructions.

c. The trial court erred in its comparative negligence instruction to the jury.

d. The trial judge committed embracery of the jury, in violation of the obstructing justice statute.

e. Negligence cannot be imputed to the appellants who were minor children.

f. Appellees wrongfully influenced the jurors' sensory awareness for countless hours by showing them a "doctored" video-tape over and over, and over again until they were sure the video-tape was in the jurors' individual memories.

The issues are set forth in more detail in appellants' Jurisdictional Statement.

WHEREFORE, appellants move this Court to deny appellees' Motion to Dismiss or Affirm, and for such other relief as this Court deems proper under the circumstances.

Respectfully submitted

Eduardo Marrujo Lucero

Eduardo Marrujo Lucero
3410 West Alaska Place
Denver, Colorado 80219
(303) 922-7634

CERTIFICATE OF MAILING

I hereby certify that I mailed 3 true and correct copies of the foregoing MOTION IN OPPOSITION TO APPELLEES' MOTION TO DISMISS OR AFFIRM, postage prepaid, this 14th day of January, 1987, to:

Theodore Halaby
1873 South Bellaire Street
1400
Denver, Colorado 80222

Eduardo M. Lucero

EXHIBIT "A"

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

No. 85-1181

MARY L. LUCERO,

Plaintiff-Appellant,

v.

JAMES "BUSTER" SNYDER, et al.,

Defendants-Appellees.

APPELLANT'S MOTION IN OPPOSITION TO APPELLEES' MOTION TO DISMISS

COMES NOW the appellant, Mary L. Lucero, pro se, and moves this Court to deny Appellees' Motion to Dismiss.

AS GROUNDS for this Motion, Appellant submits the following:

1. Appellees' Motion to Dismiss is based upon the fact that appellant has not ordered the trial transcript, however, this appeal is based on legal arguments

and issues, hence, the transcript would add nothing because the transcript is not of material effect to the District Court's Judgment.

If Appellees wish to have the transcript, they may order it and pay for it themselves.

2. Appellees claim that Appellant has not agreed to a Statement of the Evidence, however, Appellees themselves have not sought a Statement of the Evidence, and Appellant is prepared to meet with Appellees to discuss a Statement of the Evidence.

3. The brief submitted by Appellant on December 2, 1985 is part of the record and there is no justifiable reason to strike it. Moreover, Appellees failed to timely file their Opening Brief and they are being evasive and using delaying tactics to avoid meeting the issues that

are confronting them by reason of Appellants's Brief.

4. No evidence of any negligence on the part of Appellant was presented, however, the negligence instruction was used to confuse the jury, and [it] was so prejudicial that it was plain error and it merits the most exacting judicial scrutiny. There is no testimony in the record upon which to predicate such an instruction against Appellant. The necessary effect was to confuse and mislead the jury, and the instruction is therefore prejudicial. Johnson v. Pennington, 150 S.W. 863 (1912).

The verdict in this action is not supported by the evidence. This is plain error, and it is highly prejudicial against Appellant. The plain error exception is narrow and is confined to the exceptional case (and this case is exceptional because the trial was miscarriage

of justice) in which error has affected seriously the fairness, integrity, or public reputation of judicial proceedings. Wright v. Farmers Co-op, 620 F. 2d 694 (8th Cir., 1980); Johnson v. Houser, 704 F. 2d 1049 (8th Cir., 1983).

5. This case merits the most careful scrutiny because the First Amendment is the very core of this Nation's fundamental constitutional freedoms.

6. The record in this case should be fully developed since this case involves long established customs and policies of racial animosity and pseudo-apartheid by the white majority population in Denver against Chicano citizens through acts of violence and terrorism perpetrated by Denver Police Officers against Chicano citizens as part of their official duties.

WHEREFORE, Appellant moves this

Court to grant the relief she is requesting in this Motion, that the District Court's decision be reversed, and that the case be remanded for retrial.

Respectfully submitted

/s/
Mary L. Lucero
Appellant, pro se
3410 West Alaska Place
Denver, Colorado 80219

CERTIFICATE OF MAILING

I hereby certify that on the 6th day of January, 1986, a true and correct copy of the foregoing APPELLANT'S MOTION IN OPPOSITION TO APPELLEES' MOTION TO DISMISS was deposited in the United States mail, postage prepaid and addressed to the following addressees:

Mr. Theodore Halaby, and
Mr. Jonathan Cross
1873 South Bellaire St., #1400
Denver, Colorado 80222

/s/ Eduardo M. Lucero